

§ 98.4

§ 98.1 (a) or (b) not above the elementary or secondary education level, as determined under State law.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232h(a))

§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in § 98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

- (1) Political affiliations;
- (2) Mental and psychological problems potentially embarrassing to the student or his or her family;
- (3) Sex behavior and attitudes;
- (4) Illegal, anti-social, self-incriminating and demeaning behavior;
- (5) Critical appraisals of other individuals with whom the student has close family relationships;
- (6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, *prior consent* means:

- (1) Prior consent of the student, if the student is an adult or emancipated minor; or
- (2) Prior written consent of the parent or guardian, if the student is an unemancipated minor.

(c) As used in paragraph (a) of this section:

(1) *Psychiatric or psychological examination or test* means a method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings; and

(2) *Psychiatric or psychological treatment* means an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emo-

34 CFR Subtitle A (7-1-12 Edition)

tional, or attitudinal characteristics of an individual or group.

(Authority: 20 U.S.C. 1232h(b))

§ 98.5 Information and investigation office.

(a) The Secretary has designated an office to provide information about the requirements of section 439 of the Act, and to investigate, process, and review complaints that may be filed concerning alleged violations of the provisions of the section.

(b) The following is the name and address of the office designated under paragraph (a) of this section: Family Educational Rights and Privacy Act Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

(Authority: 20 U.S.C. 1231e-3(a)(1), 1232h)

§ 98.6 Reports.

The Secretary may require the recipient to submit reports containing information necessary to resolve complaints under section 439 of the Act and the regulations in this part.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232h)

§ 98.7 Filing a complaint.

(a) Only a student or a parent or guardian of a student directly affected by a violation under Section 439 of the Act may file a complaint under this part. The complaint must be submitted in writing to the Office.

(b) The complaint filed under paragraph (a) of this section must—

(1) Contain specific allegations of fact giving reasonable cause to believe that a violation of either § 98.3 or § 98.4 exists; and

(2) Include evidence of attempted resolution of the complaint at the local level (and at the State level if a State complaint resolution process exists), including the names of local and State officials contacted and significant dates in the attempted resolution process.

(c) The Office investigates each complaint which the Office receives that meets the requirements of this section to determine whether the recipient or